

Shasta LAFCO

Shasta Local Agency Formation Commission

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MINUTES

Regular Meeting April 4, 2013

(These minutes are not intended to be a verbatim transcription of the proceedings and discussion associated with the business on the Commission's agenda; rather, what follows is a summary of the order of business and general nature of testimony, Commission deliberation, and action taken.)

CALL TO ORDER/ROLL CALL

Chairman Baugh called the meeting to order at 9:00 am at the Anderson City Council Chambers in Anderson, California. Commissioners Farr, Haynes, Jones, Kehoe, Mathena and Morgan were present. Executive Officer Amy Mickelson, Attorney Jim Underwood and Clerk/Analyst Marissa Jackson were present as staff. Commissioner Day was absent. Alternate Commissioners Fust and Russell were present as members of the audience.

PLEDGE OF ALLEGIANCE

Commissioner Haynes led the Pledge of Allegiance.

PUBLIC COMMENT

Public comment was opened at 9:02 am. Jan Lopez, Consultant to Fall River Mills CSD, presented and read a letter regarding the sphere of influence (SOI) hearing for Fall River Valley CSD and their draft municipal services review. Terry Briggs, Fall River Mills resident, also spoke about the municipal service review. Public comment was closed at 9:10 am.

CONSENT CALENDAR

By motion made (Haynes) and seconded, the consent calendar was approved. Commissioner Farr abstained from voting on the minutes due to his absence at the previous meeting.

BUDGET AND FISCAL AFFAIRS

Ms. Mickelson reported that pursuant to the Commission's direction the draft budget was referred back to the Budget Committee to cut line-item costs and maintain the current revenues from participating agencies, although the budget does not allow for all legal mandates required. A copy of that proposed budget was circulated to all Cost-of-Share participants and agenda recipients, but no comments were received.

Diana Rogers, Fall River Mills Cemetery District Board member, said that she had not received a copy of the budget, likely due to District staffing changes. Jan Lopez, Consultant to Fall River Mills CSD, presented and read a letter regarding the draft budget.

Commissioner Baugh acknowledged the need to complete studies and realizes they must be funded. Commissioner Morgan believes LAFCO is putting itself at risk by not increasing the budget for studies and projects by at least 2-3%. Commissioner Mathena pointed out that budgets can be increased and contractors can be hired, but district cooperation is still necessary. Commissioner Mathena moved to approve the budget due to time restraints, Morgan seconded. Commissioner Jones noted that he would not vote in favor of the motion due to his concerns regarding studies. Discussion followed.

Commissioner Kehoe moved to refer it back to the Budget Committee, the motion was seconded by Commissioner Farr, who pointed out that budgets have never reflected costs of MSRs. Commissioner Farr asked how other LAFCOs budget for studies. Ms. Mickelson reported that other LAFCO budgets reveal that the large majority of LAFCO's who have completed this mandate have used consultants, although simpler MSRs are generally done in-house. She added that LAFCO should have been budgeting \$50-60,000 per year for consultants to complete the first round, but did not. Utilizing staff and consultants, she believes that the studies can be completed with approximately \$70,000 per year. Ms. Mickelson reminded the Commission that they could adopt the draft budget with direction to staff to explore actual costs of specific studies and bring back an additional proposal with the final budget.

Barbara Briggs, Fall River Valley CSD Vice Chair, questioned why Yuba can accomplish more work with the same budget. Terry Briggs, Fall River Valley resident, also commented.

In response, Executive Officer Mickelson clarified that the Yuba LAFCO budget was \$281,000 which is approximately \$80,000, or one-third, more than Shasta LAFCO's budget. Their salaries and benefits are higher, additionally, they paid \$45,000 to consultants and \$25,000 annually in legal costs. In 2008, their budget was over \$300,000. Each of the last five years they have paid at least \$45,000 to consultants and at least \$25,000 and sometimes \$40,000 in legal fees.

Ms. Mickelson reported that Fall River Valley CSD had submitted a letter which was received one day prior to the meeting. The letter offered to pay an additional \$1,250 on top of the \$2,750 already submitted for a total of \$4,000 towards their unpaid balance of \$12,440.35. No meeting has occurred with the District regarding the outstanding invoices nor have they been presented to the District's Board for payment. They have also not provided an itemization of charges they believe are owed, as reported by Mr. Hall, although the District has met three times since LAFCO's last meeting.

By motion made (Kehoe) and seconded the matter was referred to the Budget Committee for analysis and an equitable resolution. Commissioners Jones and Mathena opposed the motion. Commissioner Jones stated that he would prefer to handle the issue now since it has been ongoing and would support the compromise. Commissioner Mathena states that the Budget Committee would not have anything more to contribute since he requested to meet with Mr. Hall, but that not occurred. He added that the bill does need to be reviewed line by line and that the settlement offer is not acceptable. Attorney Underwood stated that a motion for reconsideration must occur. Commissioner Kehoe made a motion for reconsideration agenda item 5a, the motion was seconded by Commissioner Haynes, and passed.

Commissioner Haynes questioned whether or not the amount could be negotiated and could she have some assurance that the District would recognize LAFCO's effort and not proceed with litigation. Attorney

Underwood advised that any action by the Commission could not impose any direction on behalf of FRVCSD and as such the options are to approve the offer, to modify the conditions or review other options. Commissioner Mathena stated that LAFCO has an obligation to all districts to justify what is charged and why and pointed out that it would be setting a standard. He again offered to sit down with Mr. Hall and go over the charges line by line.

Mr. Hall, interim volunteer Fall River Valley CSD General Manager, stated that he was not the author of the letter, it was written by the Board. He added that he was not authorized to sit down and discuss the bill without Board approval, but would take messages back to the Board. He was unclear on when the Board drafted the letter since there was no Board vote on the matter.

Commissioner Jones stated that this item is not contingent upon any future dealings. Commissioner Morgan requested to see the charges from LAFCO and would like to go over each line item. Commissioner Kehoe states that he was not prepared to move forward on the letter as he is interested in seeing an analysis on the fixed costs of what actions were taken by LAFCO versus variable costs. He is troubled by the observation that the letter may not be reflective of an official action by the District and that an equitable settlement requires further study.

Barbara Briggs, Fall River Valley CSD Vice Chair, stated that she was on the committee and that the letter was sent by email on March 28th, specifically to Commissioner Haynes and Farr, and has not been before their Board. She disputes charges on the bill. Commissioner Kehoe again moved to refer the matter to the Budget Committee for a comprehensive and objective review of each line item on the bill, bilaterally. Terry Briggs suggested counsel be present for the meeting or record it for potential litigation.

David Hall said FRVCSD spent more than \$25,000 for attorneys and consultants and now are adding a \$15,000 bill for nothing. Commissioner Mathena pointed out that we have attempted to work with them and have been rejected, LAFCO did not hire the consultants and attorneys – FRVCSD did. The motion was seconded, passing unanimously. A break was taken from 10:25 to 10:33 am.

OPERATIONS AND ADMINISTRATION

Ms. Mickelson reported that in 2002, Shasta LAFCO made a policy decision regarding what agencies would be subject to a Municipal Service Review (MSR). The following is the adopted policy regarding this issue:

2.1.2 Agencies Subject to Review: Shasta LAFCO has concluded that the following agencies in Shasta County provide services which are municipal in nature, and as such, are subject to the services review requirement:

<i>County</i>	<i>Community Services Districts</i>
<i>County Service Areas</i>	<i>Water Districts</i>
<i>Cities</i>	<i>Fire Protection Districts</i>

Conversely, Shasta LAFCO has concluded that while the cemetery districts, health care districts, irrigation districts, mosquito abatement districts, and resource conservation districts in Shasta County are subject to a sphere of influence determination, these types of districts do not provide services that are classified as

municipal services. Therefore, it is the position of Shasta LAFCO that these districts and the services they provide are not subject to municipal services reviews.

Ms. Mickelson advised that MSRs are essential for making determinations in an SOI and/or a reorganization proposal. In proposals, like Mayer's Memorial Healthcare District Reorganization, it is difficult to make recommendations without the information provided in an MSR. Current draft legislation (AB 678) being proposed would require health care districts to undergo an assessment every five years, part of which would be an MSR. The Executive Officer recommended changing policy to require health care districts to be subjected to MSRs.

Additionally, Ms. Mickelson recommended the following statement be adopted to policy: *Therefore, it is the position of Shasta LAFCO that these districts and the services they provide are not **may not be** subject to municipal services reviews, **unless (a) deemed necessary in the course of completing a Sphere of Influence or (b) when a Reorganization and/or Sphere of Influence Amendment is proposed by the district. In such cases as noted in (b), the applicant will bear the cost of completing the Municipal Services Review as outlined in the Commission's MSR Consultant policy.***

She reminded the Commission that in February 2007, Commissioner Kehoe questioned the legitimacy of the exemption and in June 2007, Attorney Liz Johnson provided a legal opinion advising the Commission to revisit the issue at a later date. The matter was brought before the Commission again in 2009 and 2010, although no action was taken either time. In February 2013, staff asked for the decision to be considered in light of the Mayers Memorial Hospital proposal as it conflicted with Lassen and Modoc County policies.

Commissioner Baugh asked whether the EO or Legal Counsel had an opinion as to whether the exemptions should exist. Ms. Mickelson stated she had not ever, nor did she now believe the exemptions should exist at all, but that there might be a policy which could assign levels of studies for districts and that determinations still need to be made. Attorney Underwood stated that he agreed with Attorney Johnson's opinion that Cortese-Knox is ambiguous and the matter does merit a case by case review.

Members of the audience added their comments to the discussion.

After much discussion, a motion was made to remove exemptions (Mathena) and seconded, passing unanimously. Commissioner Jones made a motion that the cost of routine MSRs required every five years be borne by LAFCO, the exception would be when a district brings a complex proposal which requires significant reorganization. The motion was seconded and passed. It was then determined that the item should be included on the next agenda to allow districts an opportunity to speak to the issue. Commissioner Jones amended his motion to place the item on the June 13th agenda, the motion was seconded and passed unanimously. Matt Rees asked whether his district would have to bear the entire cost of their MSR since LAFCO has now amended policy.

The Executive Officer reported that while LAFCO is charged with doing MSR, it was not granted power to compel the cooperation of the districts to be studied. Historically, LAFCO has not considered proposals until information is provided, which has not effective. She requested policy to allow Shasta LAFCO to adopt minimal MSRs for those agencies that have not provided requested information. The policy would

also specify that if the agency seeks LAFCO action, the MSR and SOI will be updated at that time, with costs borne by the applicant. Ms. Mickelson added that the Commission could also consider adopting a “zero sphere” for non-responding agencies. After discussion, it was requested that staff provide and counsel draft policy to be brought back to the Commission for consideration. A motion was made (Mathena) to adopt staff’s recommendation for additional policy consideration. It was seconded and passed.

Ms. Mickelson reported that the legal services contract had expired. She presented the draft contract as provided by Mr. Jim Underwood. The only changes were the firm name and tax ID number, the rate for services is unchanged. She advised that an RFP could also be circulated. A motion was made (Haynes) and seconded to approve the contract.

Ms. Mickelson presented the SDRMA Board of Directors Notification of Nominations. No nomination was made.

Ms. Mickelson gave an update as to proposals currently being reviewed and heard, as well as expected proposals. Commissioner Baugh thanked Ms. Mickelson for her achievements with the South County Fire Districts.

COMMISSIONER ANNOUNCEMENTS

Commissioner Farr will be unable to attend the June 13th meeting.

STAFF ANNOUNCEMENTS

The next meeting will be Thursday, June 13, 2013 at 9:00 am at City of Redding Council Chambers.

CLOSED SESSION

The Commission adjourned to Closed Session, pursuant to Government Code Section 54956.9(b), regarding Potential Litigation (1 Case).

REPORT FROM CLOSED SESSION

Attorney Underwood stated that there were no reportable actions.

ADJOURNMENT

There being no further business, Chairman Baugh adjourned the meeting at 12:50 pm.

ATTEST:

Marissa Jackson
Clerk to the Commission